

-2:15-cv-01045-RFB-PAL-

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

4 CUNG LE, et al.,)
5 Plaintiffs,) Case No. 2:15-cv-01045-RFB-PAL
6 vs.) Las Vegas, Nevada
7 ZUFFA, LLC, d/b/a Ultimate) Friday, September 13, 2019
Fighting Championship and) 8:22 a.m.
8 UFC,) EVIDENTIARY HEARING, DAY SIX
9 Defendants.

Defendants.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

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APPEARANCES: See Pages 2 and 3

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COURT REPORTER: Patricia L. Ganci, RMR, CRR
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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1 THE COURT: So I'm going to ask you a question that I
2 asked Professor Oyer which he didn't really answer, which maybe
3 you can help me with, which is, if I were to find there's
4 sufficient or plausible evidence that, in fact, wage share was
5 used within the industry, why would I not then find it an
6 appropriate measure?

7 Because I asked him that, Mr. Isaacson, a couple times,
8 and he did not actually give me I think a full answer to that.
9 And so, perhaps, you can help me understand that. Because the
10 fact that it hasn't been used doesn't necessarily mean that it
11 couldn't be used if in fact it's being used within the industry.
12 And he acknowledged that if something is used in the industry,
13 potentially that might be the case, but that was as close as he
14 got. So maybe you can help me understand that.

15 And I'm not saying that they've established it. What
16 I'm saying is that if they come forward and say you have enough
17 here to find that it was plausibly used, and they're going to
18 look at that chart and they're going to talk about what that
19 chart actually means as relates to the projections but -- and
20 other sort of record evidence. But if I were to find that, in
21 fact, it was used, how does that impact my assessment of whether
22 or not wage share is an appropriate measure?

23 MR. ISAACSON: Used -- you have to ask the question
24 used for what. And --

25 THE COURT: So let me specify what I mean by that.

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1 MR. ISAACSON: Oh.

2 THE COURT: If I were to find that in the record Zuffa
3 itself looked at event revenues and used percentages --

4 MR. ISAACSON: Right.

5 THE COURT: -- to try to determine how much to pay or
6 not pay fighters, would that be enough from your perspective for
7 me to find that wage share is an appropriate measure in this
8 case?

9 MR. ISAACSON: No, because you are -- and you are --
10 you are trying to decide whether it's an appropriate measure to
11 determine the effect of monopsony. All right. That is
12 completely different from assessing what -- a business saying
13 how much am I paying for my labor, how much am I paying for my
14 manufacturing costs. And that's what Professor Oyer told you
15 and what Dr. Topel told you is that you have businesses, and
16 businesses break down, like, how much -- what percentage am I
17 paying to this, what percentage am I paying to that. That is
18 not an evaluation of monopsony power.

19 And --

20 THE COURT: You will have one more witness who is going
21 to talk a little bit more about this because I think that's one
22 reason why Mr. Silva I think is relevant as relates to pay
23 structure potentially, which is one of the questions I want to
24 ask him.

25 But they -- all of these witnesses at least acknowledge

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1 you're below 90 percent. It's the first time they've made any
2 argument along those lines.

3 We obviously haven't responded to it because it's brand
4 new. The reason it's nonsense is I can cite you case after case
5 where, in fact, virtually every case the data is more
6 incomplete. And of course you use the data you do have where
7 not all -- we didn't have data for all fighters, especially the
8 ones who are most briefly in the UFC. And so you don't have
9 complete data. You draw an inference.

10 Dr. Singer's impact regression shows impact to every
11 single fighter who was in the UFC relatively briefly and just is
12 unable to show impact for about a dozen of the longest-standing
13 fighters, which means that these fighters would be impacted at
14 least at 99 percent if you were to draw any sort of reasonable
15 inference. But, again, it's a brand new argument in a brief
16 that we got this morning for the first time.

17 Zuffa --

18 THE COURT: Do you want to address briefly the issue
19 about the article?

20 MR. DAVIS: So the article -- first of all, nothing
21 that opposing counsel said said the article's unreliable. It
22 said the journal in which it appeared was unreliable. And
23 opposing counsel said it was a fraud and -- but the fraud is the
24 journal. We don't know that the article -- authors of the
25 article were duped or the folks who evaluated it were duped.

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1 And, you know, I will say -- so Mr. Isaacson said, oh,
2 it's a fraud. We just found out. We don't know when they found
3 out about this. I wish this weren't a pattern, but I do have to
4 say, Your Honor, every time we make an argument, Zuffa feels as
5 if it should be getting the last word. They've done new
6 regressions during this hearing. They've presented new evidence
7 and new arguments in the briefs they submitted this morning
8 which we took to be only summaries of what had already been
9 done.

10 This is not some anomaly. This is a pattern and
11 practice where if things don't seem to be going well, let's come
12 up with yet a new argument at the last minute and hope that
13 suddenly changes everything.

14 And so I would say, Your Honor, it is way too late.
15 There is no basis, appropriate basis, for you to evaluate this
16 point. We don't really need it anyway, but just on principle
17 that -- Your Honor should not be taking -- I respectfully submit
18 -- we respectfully submit, Your Honor should not be taking into
19 account this or the brief that we'll get on Monday on this
20 hearing or the one we'll get a week from Monday or the
21 regression that will come a week after that.

22 At some point when there's a clear order in place about
23 how these things should proceed, they should stop. And this is
24 well past that time, and it's not the first time we've been well
25 past that time.